



Rule and Interpretive/Policy Statement Review Checklist
(This form must be filled out electronically.)

This form is to be used when the current version of the rule(s) has/have not previously been reviewed. When reviewing an interpretive or policy statement, this document is to be used only if the review of the statement is not in conjunction with the review of a rule.

All responses should be **bolded**.

Document(s) Reviewed (include title): **WAC 458-20-117 (Sales and/or use of dunnage.)**

Date last adopted/issued: **December 13, 1999**

Reviewer: **Sue Goldstein**

Date review completed: **December 18, 2003**

Briefly explain the subject matter of the document(s):

The rule explains the B&O, retail sales, and use tax applications to persons who manufacture and use dunnage. It clarifies that the retail sales or use tax is due on materials initially used for dunnage, even though these materials are later resold. The rule also explains that a retail sales tax exemption is available for sales to certain carriers operating in interstate commerce. The rule further explains that manufacturers who use dunnage in transporting goods between their own plants are consumers of those materials.

Type an "X" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Public requests for review:

YES	NO	
	X	Is this document being reviewed at this time because of a public (e.g., taxpayer or business association) request?

If "yes," provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request.

2. Need:

YES	NO	
X		Is the document necessary to comply with the statutes that authorize it? (E.g., Is it necessary to comply with or clarify the application of the statutes that are being implemented? Does it provide detailed information not found in the statutes?)
	X	Is the information provided in the document so obsolete that it is of little value, warranting the repeal or revision of the document?
	X	Have the laws changed so that the document should be revised or repealed? (If the response is "yes" that the document should be repealed, explain and



		identify the statutes the rule implemented, and skip to Section 10.)
X		Is the document necessary to protect or safeguard the health, welfare (budget levels necessary to provide services to the citizens of the state of Washington), or safety of Washington's citizens? (If the response is "no", the recommendation must be to repeal the document.)

Please explain.

Rule 117 defines dunnage and distinguishes it from other types of packing materials. The rule explains different tax results arising from the sale or use of dunnage when compared to the treatment of sales or use of other packing materials and containers.

3. Related interpretive/policy statements, court decisions, BTA decisions, and WTDs:

Complete Subsection (a) only if reviewing a rule. Subsection (b) should be completed only if the subject of the review is an interpretive or policy statement. Excise Tax Advisories (ETAs), Property Tax Advisories and Bulletins (PTAs/PTBs), and Interim Audit Guidelines (IAGs) are considered interpretive and/or policy statements.

(a)

YES	NO	
	X	Are there any interpretive or policy statements that should be incorporated into this rule? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any interpretive or policy statements that should be cancelled because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) that provide information that should be incorporated into this rule?
	X	Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the rule?

(b)

YES	NO	
		Should this interpretive or policy statement be incorporated into a rule?
		Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) that affect the information now provided in this document?
		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the document?

If the answer is "yes" to any of the questions in (a) or (b) above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

While there are no related documents that need to be incorporated into the rule at this time, when the rule is next revised, it should provide an example demonstrating the



discussion of the varying tax treatments of pallets. See 19 WTD 977 (2000) (whether sales of pallets to truckers were subject to the retail sales tax) and 20 WTD 117 (2001) (tax treatment of shipping pallets used by beer manufacturer and distributor).

4. Clarity and Effectiveness:

YES	NO	
X		Is the document written and organized in a clear and concise manner?
X		Are citations to other rules, laws, or other authority accurate? (If no, identify the incorrect citation below and provide the correct citation.)
X		Is the document providing the result(s) that it was originally designed to achieve? (E.g., does it reduce the need for taxpayers to search multiple rules or statutes to determine their tax-reporting responsibilities or help ensure that the tax law and/or exemptions are consistently applied?)
	X	Do changes in industry practices warrant repealing or revising this document?
	X	Do administrative changes within the Department warrant repealing or revising this document?

Please explain.

5. Intent and Statutory Authority:

YES	NO	
X		Does the Department have sufficient authority to adopt this document? (Cite the statutory authority in the explanation below.)
X		Is the document consistent with the legislative intent of the statute(s) that authorize it? (I.e., is the information provided in the document consistent with the statute(s) that it was designed to implement ?) If “no,” identify the specific statute and explain below. List all statutes being implemented in Section 9, below.)
	X	Is there a need to recommend legislative changes to the statute(s) being implemented by this document?

Please explain.

RCW 82.32.300 and 82.01.060(2) authorize the Department of Revenue to adopt and publish rules.

6. Coordination: Agencies should consult with and coordinate with other governmental entities that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.

YES	NO	
	X	Could consultation and coordination with other governmental entities and/or state agencies eliminate or reduce duplication and inconsistency?

Please explain.

The Department of Revenue has the exclusive authority to administer the B&O tax, retail sales tax, and use tax, with regard to dunnage.



7. Cost: When responding, consider only the costs imposed by the document being reviewed and not by the statute.

YES	NO	
	X	Have the qualitative and quantitative benefits of the document been considered in relation to its costs? (Answer "yes" only if a Cost Benefit Analysis was completed when the rule was last adopted or revised.)

Please explain.

This is an interpretive rule that imposes no new or additional administrative burdens on businesses that are not already imposed by law.

8. Fairness: When responding, consider only the impacts imposed by the document being reviewed and not by the statute.

YES	NO	
X		Does the document result in equitable treatment of those required to comply with it?
	X	Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community?
		Should the document be strengthened to provide additional protection to correct any disproportionate impact on any particular segment of the regulated community?

Please explain.

This document results in the equitable treatment of those required to comply with it.

9. LISTING OF DOCUMENTS REVIEWED: Use "bullets" with any lists, and include documents discussed above. Citations to statutes, interpretive or policy statements, and similar documents should include titles. Citations to Attorney General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).

Statute(s) Implemented: **To the extent the following relate to dunnage:**

- **RCW 82.04.040 ("Sale," "casual or isolated sale);**
- **RCW 82.04.050 ("Sale at retail," "retail sale");**
- **RCW 82.04.110 ("Manufacturer");**
- **RCW 82.04.120 ("To manufacture");**
- **RCW 82.04.190 ("Consumer");**
- **RCW 82.04.240 (Tax on manufacturers);**
- **RCW 82.04.270 (Tax on wholesalers, distributors);**
- **RCW 82.04.290 (Tax on international investment management services or other business or service activities);**
- **RCW 82.08.020 (Tax imposed -- Retail sales -- Retail car rental);**
- **RCW 82.08.0261 (Exemptions --- Sales of personal property for use connected with private or common carriers in interstate or foreign commerce);**



- **RCW 82.08.0311 (Exemptions – Sales of materials and supplies used in packing horticultural products);**
- **RCW 82.12.020 (Use tax imposed); and**
- **RCW 82.12.0311 (Exemption – Use of materials and supplies in packing horticultural products).**

Interpretive and/or Policy Statements (e.g., ETAs, PTAs, IAGs):

None

Court Decisions:

None

Board of Tax Appeals Decisions (BTAs):

None

Appeal Division Decisions (WTDs):

19 WTD 977 (2000)

20 WTD 117 (2001)

Attorney General Opinions (AGOs):

None

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

- **WAC 458-20-102 (Resale certificates);**
- **WAC 458-20-112 (Value of products);**
- **WAC 458-20-115 (Sales of packing materials and containers);**
- **WAC 458-20-136 (Manufacturing, processing for hire, fabricating);**
- **WAC 458-20-175 (Persons engaged in the business of operating as a private or common carrier by air, rail or water in interstate or foreign commerce); and**
- **WAC 458-20-214 (Cooperative marketing associations and independent dealers acting as agents of others with respect to the sale of fruit and produce).**

10. Review Recommendation:

- ☐ **Amend**
- ☐ **Repeal/Cancel** (Appropriate when action is not conditioned upon another rule-making action or issuance of an interpretive or policy statement.)
- ☒ **Leave as is** (Appropriate even if the recommendation is to incorporate the current information into another rule.)
- ☐ **Begin the rule-making process for possible revision.** (Applies only when the Department has received a petition to revise a rule.)



Explanation of recommendation: Provide a brief summary of your recommendation. If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Correct inaccurate tax-reporting information now found in the current rule;
- Incorporate legislation;
- Consolidate information now available in other documents (e.g., ETAs, WTDs, and court decisions); or
- Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, and court decisions).

There is no need to revise the rule at this time. When this rule is next revised, it should provide an example demonstrating the discussion of the varying tax treatments of pallets. See 19 WTD 977 (2000) (whether sales of pallets to truckers were subject to the retail sales tax) and 20 WTD 117 (2001) (tax treatment of shipping pallets used by beer manufacturer and distributor).

11. Manager action: Date: 1/14/04

AL Reviewed and accepted recommendation

Amendment priority:

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